

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

ROXANN D.,

Plaintiff,

v.

6:21-CV-0345
(ML)

COMMISSIONER OF SOCIAL
SECURITY,

Defendant.

APPEARANCES:

OLINSKY LAW GROUP
Counsel for the Plaintiff
250 South Clinton Street-Suite 210
Syracuse, New York 13202

SOCIAL SECURITY ADMINISTRATION
Counsel for the Defendant
J.F.K. Federal Building, Room 625
15 New Sudbury Street
Boston, Massachusetts 02203

MIROSLAV LOVRIC, United States Magistrate Judge

OF COUNSEL:

ALEXANDER C. HOBAICA, ESQ.

MOLLY CARTER, ESQ.
Special Assistant U.S. Attorney

ORDER

Currently pending before the Court in this action, in which Plaintiff seeks judicial review of an adverse administrative determination by the Commissioner of Social Security, pursuant to 42 U.S.C. §§ 405(g) and 1383(c)(3), are cross-motions for judgment on the pleadings.¹ Oral

¹ This matter, which is before me on consent of the parties pursuant to 28 U.S.C. § 636(c), has been treated in accordance with the procedures set forth in General Order No. 18. Under that General Order once issue has been joined, an action such as this is considered procedurally, as if cross-motions for judgment on the pleadings had been filed pursuant to Rule 12(c) of the Federal Rules of Civil Procedure.

argument was heard in connection with those motions on September 8, 2022, during a telephone conference conducted on the record. At the close of argument, I issued a bench decision in which, after applying the requisite deferential review standard, I found that the Commissioner's determination was supported by substantial evidence, providing further detail regarding my reasoning and addressing the specific issues raised by Plaintiff in this appeal.

After due deliberation, and based upon the Court's oral bench decision, which has been transcribed, is attached to this order, and is incorporated herein by reference, it is

ORDERED as follows:

- 1) Plaintiff's motion for judgment on the pleadings (Dkt. No. 17) is DENIED.
- 2) Defendant's motion for judgment on the pleadings (Dkt. No. 18) is GRANTED.
- 3) The Commissioner's decision denying Plaintiff Social Security benefits is

AFFIRMED.

- 4) Plaintiff's Complaint (Dkt. No. 1) is DISMISSED.
- 5) The Clerk of Court is respectfully directed to enter judgment, based upon this

determination, DISMISSING Plaintiff's Complaint in its entirety and closing this case.

Dated: September 9, 2022
Binghamton, New York



Miroslav Lovric
United States Magistrate Judge
Northern District of New York

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

—
D

vs.

6:21-CV-0345

COMMISSIONER OF SOCIAL SECURITY

—
—
DECISION AND ORDER

September 8, 2022

The HONORABLE MIROSLAV LOVRIC,
DISTRICT MAGISTRATE JUDGE

—
—
A P P E A R A N C E S

For Plaintiff: ALEXANDER HOBAICA, ESQ.

For Defendant: MOLLY CARTER, ESQ.

*Ruth I. Lynch, RPR, RMR, NYSRCR
Official United States Court Reporter
Binghamton, New York 13901*

1 THE COURT: All right. The Court's going to begin
2 its decision and analysis as follows:

3 So first, plaintiff has commenced this proceeding
4 pursuant to Title 42 United States Code Sections 405(g) and
5 1383(c) to challenge the adverse determination by the
6 Commissioner of Social Security finding that she was not
7 disabled at the relevant times and therefore ineligible for
8 the benefits that she sought.

9 By way of background, the Court notes as follows:
10 Plaintiff was born in 1984. She is currently approximately
11 37 years of age. She was approximately 32 years of age at
12 the alleged onset of her disability on May 13 of 2017.
13 Plaintiff stands approximately 5 feet 2 inches in height and
14 weighs approximately 208 pounds.

15 Plaintiff has a GED and an apprentice electrician
16 certificate.

17 Procedurally, the Court notes as follows for this
18 case: Plaintiff applied for Title II and Title XVI benefits
19 on October 12, 2017, alleging an onset date of May 13, 2017.
20 In support of her claim for disability benefits, plaintiff
21 claims disability based on physical impairments.

22 Administrative Law Judge Mary Sparks conducted a
23 hearing on August 30th, 2019, to address plaintiff's
24 application for benefits. ALJ Sparks issued an unfavorable
25 decision on November 13, 2019. That became a final

1 determination of the agency on January 2, 2021, when the
2 Social Security Administration Appeals Council denied
3 plaintiff's application for review.

4 This action was commenced on March 25th of 2021,
5 and it is timely.

6 In her decision, ALJ Sparks applied the familiar
7 five-step test for determining disability.

8 At step one, the ALJ concluded that plaintiff had
9 not engaged in substantial gainful activity since May 13 of
10 2017, the alleged onset date.

11 At step two, the ALJ concluded that plaintiff
12 suffers from severe impairments that impose more than
13 minimal limitations on her ability to perform basic work
14 activities. Specifically the ALJ found that plaintiff
15 suffers from status post -- status post total disc
16 replacement C5 through C6 and C6 through C7; disc bulge at
17 C5 through C6; degenerative changes to the cervical spine;
18 and also obesity.

19 At step three, ALJ Sparks concluded that
20 plaintiff's conditions do not meet or medically equal any of
21 the listed presumptively disabling conditions set forth in
22 the commissioner's regulations. And the ALJ focused on
23 listings 1.04 dealing with disorders of the spine; 1.00
24 dealing with musculoskeletal disorders; and SSR 19-2p
25 dealing with obesity.

1 Next, the ALJ determined that plaintiff retains
2 the residual functional capacity to perform light work
3 except that she requires the option to sit or stand
4 alternatively and at will, and provided she is not off task
5 more than 10 percent of the workday. The ALJ continued,
6 plaintiff can no more than occasionally use the left upper
7 extremity to perform pushing or pulling; that plaintiff can
8 never crawl and climb ladders, ropes, or scaffolds; that no
9 more than occasionally can the plaintiff climb ramps or
10 stairs, stoop, crouch, and kneel; that plaintiff can perform
11 no more than occasional rotation, flexion, and, excuse me,
12 or extension of the neck. The ALJ continued that plaintiff
13 can perform no more than occasional reaching, including
14 overhead, with the left upper extremity. And, lastly, the
15 ALJ noted that plaintiff can perform no more than frequent
16 feeling with the left upper extremity.

17 At step four, the ALJ concluded that based on the
18 testimony of the vocational expert plaintiff could perform
19 her past relevant work as unit clerk as actually performed
20 and is therefore not disabled.

21 In the alternative, the ALJ proceeded to step five
22 and concluded that based on the testimony of the vocational
23 expert and considering plaintiff's age, education, work
24 experience, and RFC, she is capable of performing the
25 requirements of representative occupations such as routing

1 clerk, toll collector, and dealer accounts investigator.

2 Thus, the ALJ found that plaintiff was not
3 disabled.

4 Now, as you know, the Court's functional role in
5 this case is limited and extremely deferential. I must
6 determine whether correct legal principles were applied and
7 whether the determination is supported by substantial
8 evidence, defined as such relevant evidence as a reasonable
9 mind would find sufficient to support a conclusion. As the
10 Second Circuit Court of Appeals noted in the case of
11 *Brault V. Social Security Administration Commissioner*,
12 that's found at 683 F.3rd 443, a 2012 Second Circuit case,
13 the Circuit noted that this standard is demanding, more so
14 than the clearly erroneous standard. The Second Circuit
15 noted in *Brault* that once there is a finding of fact, that
16 fact can be rejected only if a reasonable fact-finder would
17 have to conclude otherwise.

18 Now, on appeal in this matter plaintiff raises two
19 contentions. First, plaintiff argues that substantial
20 evidence does not support the ALJ's RFC determination
21 because the ALJ failed to adequately evaluate the opinions
22 of treating physicians Dr. Karen Banks-Linder and
23 Dr. Michael Miller. And, secondly, plaintiff also contends
24 and argues that the ALJ failed to properly evaluate
25 plaintiff's subjective symptoms.

1 The Court begins its analysis and sets forth as
2 follows:

3 With respect to plaintiff's first argument, that
4 the ALJ improperly evaluated the opinions of
5 Dr. Banks-Linder and Dr. Miller, there are three opinions at
6 issue. First, December 7th -- December of 2017 there is an
7 opinion from Dr. Banks-Linder that the ALJ found generally
8 persuasive, and plaintiff does not challenge that finding as
9 it relates to this opinion.

10 Secondly, there is an opinion of August 2019 from
11 Dr. Banks-Linder which the ALJ did not find persuasive, and
12 plaintiff challenges this -- this finding as to this
13 opinion.

14 And then, thirdly, there is an opinion of August
15 2019 from Dr. Miller which the ALJ did not find persuasive,
16 and plaintiff challenges the ALJ's finding as to this
17 opinion.

18 As defendant identified in her brief,
19 Dr. Banks-Linder opined that the limitations outlined in her
20 medical source statement dated December 13, 2017, quote,
21 existed to the same degree since at least, end of quote, May
22 2017. See docket number 11 at 390, transcript page 386.
23 When Dr. Banks-Linder provided a new medical source
24 statement dated August 28th of 2019, which included
25 significantly more limitations, she opined again that the

1 limitations, quote, existed to the same degree since May 13,
2 2017, end quote. See docket number 11 at 691, transcript
3 page 687. As the ALJ concluded, Dr. Banks-Linder's opinions
4 are inconsistent because she opined that plaintiff had two
5 very different levels of limitation during the same time
6 period; at least May 2017 through December 13th of 2017.
7 This inconsistency was a reasonable basis for the ALJ's
8 determination that Dr. Banks-Linder's opinion dated
9 August 28, 2019 was not persuasive.

10 Although plaintiff argues and points to evidence
11 in the record supporting her contention that her condition
12 worsened after her neck surgery, there was also evidence in
13 the record as highlighted by defendant and the ALJ
14 supporting the conclusion that plaintiff's condition did not
15 significantly change between December 2017 and August 2019.
16 In addition, the ALJ supportably concluded that evidence in
17 the record did not support Dr. Banks-Linder's August 2019
18 off task and absenteeism limitations. The fact that some
19 evidence could support plaintiff's position is not enough to
20 compel remand under the deferential substantial evidence
21 standard of review.

22 To the extent that plaintiff argues that the ALJ's
23 explanation was insufficient, I find that argument
24 unpersuasive. The Social Security Act does not require the
25 ALJ to explain how she considered every piece of evidence in

1 the record. The ALJ's decision here viewed as a whole is
2 not so obscure as to make judicial review futile.

3 Further, I find that for the reasons stated in
4 defendant's brief, the ALJ supportably found that
5 Dr. Miller's opinion was not persuasive. As the ALJ noted,
6 Dr. Miller last treated plaintiff approximately two years
7 before rendering his opinion, which was before plaintiff's
8 neck surgery. As the ALJ supportably concluded, plaintiff's
9 condition improved after her surgery.

10 For these reasons, and the reasons stated in
11 defendant's brief, I find that substantial evidence supports
12 the ALJ's RFC assessment and evaluation of the opinions of
13 Dr. Banks-Linder and Dr. Miller.

14 Second, I find that -- I find that for the reasons
15 stated in defendant's brief, substantial evidence supports
16 the ALJ's evaluation of plaintiff's subjective statements.
17 Moreover, I find that the ALJ's decision included a logical
18 bridge between the evidence of record and her conclusion
19 that plaintiff's surgery was a success and plaintiff's
20 post-surgical symptoms were insignificant.

21 As the ALJ noted, plaintiff underwent neck surgery
22 in November 2017. The ALJ noted that although plaintiff
23 complained of neck pain and arm pain and weakness in
24 November 2018, being approximately 12 months after her
25 surgery, she did not follow through with additional

1 treatment, even conservative treatment, after raising these
2 symptoms. The ALJ noted that other than a February 2018 CT
3 myelogram, the record does not reference plaintiff's
4 cervical spine issues after November 2018. In addition,
5 there were several dates between plaintiff's surgery and
6 November of 2017 and the complaint in November 2018 during
7 which plaintiff reported that her condition had improved
8 since the surgery.

9 In addition, the record contains substantial
10 evidence reflecting plaintiff's improvement after her
11 cervical procedure in November 2017, including findings
12 documenting a full range of motion, full strength, and
13 intact neurological examinations. These were supportable
14 reasons to discount plaintiff's subjective statements
15 regarding pain.

16 For these reasons and based upon this analysis and
17 as a result thereof, I therefore conclude and find
18 plaintiff's motion for judgment on the pleadings is denied.
19 Defendant's motion for judgment on the pleadings is granted.
20 Plaintiff's complaint is dismissed. And the Commissioner's
21 decision denying plaintiff benefits is affirmed.

22 This constitutes the decision and reasoning of the
23 Court.

24 - - - - -
25